

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

OCWEN FEDERAL BANK FSB,)	
Plaintiff,)	
v.)	1:04CV931
RORY K. CHAVIS and)	
MICHELLE L. CHAVIS,)	
Defendants.)	

ORDER AND JUDGMENT

This matter is before the Court on an unopposed Motion for Summary Judgment by Plaintiff Ocwen Federal Bank FSB (“Plaintiff” or “Ocwen”) [Document #33] seeking to recover on a Note previously executed by Defendants Rory K. Chavis¹ and Michelle L. Chavis (“Defendants”), who are proceeding *pro se*. Defendants were served with the Motion for Summary Judgment, and were also notified by the Clerk of Court that the Motion for Summary Judgment had been filed, and that failure to respond may cause the court to conclude that Ocwen’s contentions were undisputed. However, Defendants have failed to respond.²

Having reviewed the Motion for Summary Judgment and all of the evidence presented, the Court finds that there are no genuine issues of material fact remaining at issue, and that

¹ The Complaint initially listed Mr. Chavis’ middle initial as “A” but the evidence presented indicates that Mr. Chavis’ middle initial is actually “K,” and the Note and Deed of Trust were signed by Mr. Chavis as “Rory K. Chavis.” Therefore, this Order and Judgment will reflect Mr. Chavis’ name as “Rory K. Chavis.”

² Defendants have also previously failed to respond to prior motions and failed to appear at the Court-ordered settlement conference in this case. Moreover, Defendants have failed to provide current address information to the Court, and the Clerk’s Office therefore undertook significant efforts to attempt to locate Defendants and notify them of the pending Motion for Summary Judgment.

Plaintiff is entitled to judgment in its favor. Specifically, the evidence presented establishes that on or about January 19, 2001, Defendants executed and delivered to D & M Financial Corporation a Note in the original principal amount of \$250,000.00. Pursuant to the terms of the Note, Defendants promised to repay the principal amount, accruing interest at 12.75% per annum, in consecutive monthly installments. To secure the indebtedness evidenced by the Note, Defendants executed and conveyed a Deed of Trust in favor of D & M conveying a first priority security interest in the real property at 5881 Scales Drive, Pfafftown, North Carolina. The Deed of Trust was duly recorded in the Forsyth County, North Carolina Register of Deeds' Office on or about January 29, 2001, at Book 2152, Page 1495. Subsequent to Defendants' execution of the Note and Deed of Trust, the Note and Deed of Trust were conveyed, transferred and assigned to Key Bank, N.A., and subsequently to Plaintiff Ocwen. Ocwen is now the owner and holder of the Note and Deed of Trust. The Deed of Trust failed to name the Trustee, but the proper Trustee is Priority Trustee Services of NC, L.L.C.

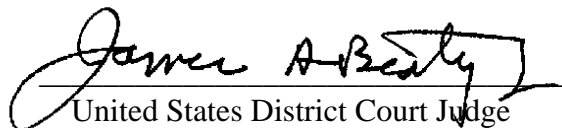
Defendants failed to make scheduled payments under the Deed of Trust and the Note as required by their terms. Consequently, the Defendants defaulted and remain in default on the payments due under and pursuant to the Deed of Trust and the Note. In accordance with the terms of the Note and Deed of Trust, Ocwen accelerated maturity of the Note and declared the entire unpaid balance immediately due and payable. The Deed of Trust contains a power of sale provision authorizing the holder thereof, in case of default, to sell the Property at public auction for the purpose of paying the indebtedness. The Defendants are indebted to Ocwen for the

unpaid balance of the Deed of Trust and Note, which totals \$242,702.87 in principal remaining, plus interest of \$128,440.28, reasonable attorneys' fees and costs of \$5,666.95, and accrued late charges of \$108.67, for a total of \$376,918.77.

No evidence or arguments to the contrary have been presented. Therefore, based on the evidence presented, the Court finds that there are no genuine issues of material fact and that Plaintiff is entitled to judgment as a matter of law in its favor.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment [Document #33] is GRANTED. IT IS ORDERED AND ADJUDGED that Judgment be entered against Defendants Rory K. Chavis and Michelle L. Chavis in favor of Plaintiff Ocwen Federal Bank FSB for the principal sum of \$242,702.87, plus interest of \$128,440.28, attorneys' fees and costs of \$5,666.95, and accrued late charges of \$108.67, for a total Judgment of \$376,918.77. IT IS FURTHER ORDERED AND ADJUDGED that the Deed of Trust executed by the Defendants and recorded on or about January 29, 2001 at Book 2152, Page 1495 in the Office of the Register of Deeds in Forsyth County, North Carolina be and hereby is reformed by adding Priority Trustee Services of NC, L.L.C. as Trustee. FINALLY, IT IS ORDERED AND ADJUDGED that Plaintiff may exercise its rights under the terms of the reformed Deed of Trust, including foreclosure on the Property pursuant to the terms of the Deed of Trust.

This, the 27th day of September, 2007.


United States District Court Judge